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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,310

10/14/2005

Hans-Peter Weitzel

WAS0728PUSA

1716

22045

7590

03/24/2009

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EXAMINER

EGWIM, KELECHI CHIDI

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

03/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,310	<b>Applicant(s)</b> WEITZEL ET AL.	
	<b>Examiner</b> Dr. Kelechi C. Egwim	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/22/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Due to amendments and persuasive arguments by applicant, the previous rejections of record have been overcome and are hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 9-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Hilton et al. (USPN 6,699,915)

In col. 3, lines 24-35, col. 6, lines 46-60 and col. 7, lines 15-37, Hilton et al. teach a process of adding to hydraulically setting binders, powder components comprising poly(ethylene-vinyl acetate), polyvinyl alcohol, and dry accelerator compounds such as calcium formate, in amounts from 1 weight percent to 20 weight percent, based on the total weight of the powder composition.

Thus, the requirements for rejection under 35 U.S.C. 102(e) are met.

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4. Claims 9-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Schad (USPN 5,366,550)

In col. 2, lines 14-24, col. 3, lines 1-25 and col. 5, lines 5-36 and the table in col. 6, Schad teaches a process of adding to hydraulically setting binders, a powder composition comprising an ethylene-vinyl acetate copolymer, exemplified by FLEX PR by Air Products, ELVACE by Reichold or DUR-O-ST by National starch, each of which are prepared with protective colloids, such as a polyvinyl alcohol, along with cement accelerators such as calcium formate, in amounts up to 3 weight percent, based on the total weight of the powder composition.

Thus, the requirements for rejection under 35 U.S.C. 102(b) are met.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz et al. (USPN 6,350,808) in combination with Hilton et al. or Schad.

In col. 3, lines 21-67, col. 4, lines 9-12 and lines 46-50, Schmitz et al. teach a process of addition to hydraulically setting binders, a powder composition comprising an ethylene-vinyl acetate copolymer with polyvinyl alcohol, protective colloids and set-control additives (accelerators) such as calcium formate.

Schmitz et al. differ from the claimed invention in that they do not limit the amount of calcium formate set-control agent to use with the powder compositions, in order to accelerate setting. However, it is well known in the art to use the claimed amounts of accelerant in such powder composition for hydraulically setting binders, for the purpose of providing control in the curing of the hydraulically binders, such as in Schad or Hilton et al. (See col. 7, lines 15-37), above.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to use the claimed amounts of the accelerator in the powder composition of Schmitz et al. in order to obtain the advantages of Schad or Hilton et al., motivated by a reasonable expectation of success.

Further, one of ordinary skill in the art would have found it *prima facie* obvious to determine a workable or even optimum range of the accelerator for the hydraulically binder's accelerator in the powder composition of Schmitz et al. "[D]iscovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art." In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980); "[W]here the general conditions of a claim are disclosed in the art, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

### ***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (571) 272-1099. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dr. Kelechi C. Egwim/  
Primary Examiner, Art Unit 1796

KCE